



STATE OF CALIFORNIA

## STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0057  
TELEPHONE (916) 327-6440 FAX (916) 324-2554  
[www.boe.ca.gov](http://www.boe.ca.gov)

BETTY T. YEE  
First District, San Francisco

SEN. GEORGE RUNNER (RET)  
Second District, Lancaster

MICHELLE STEEL  
Third District, Orange County

JEROME E. HORTON  
Fourth District, Los Angeles

JOHN CHIANG  
State Controller

CYNTHIA BRIDGES  
Executive Director

September 5, 2013

Dear Interested Party:

The State Board of Equalization (BOE) is proposing a new Cigarette and Tobacco Products Tax Regulation. Proposed Regulation 4801, *Transfers of Cigarette and Tobacco Products between Retail Stores Owned by the Same Person*, copy enclosed, establishes the documentary requirements for retailers transferring cigarettes or tobacco products.

As part of the interested parties process BOE staff sent a survey on June 19, 2013 to cigarette and tobacco products licensed retailers that operate two or more locations. The survey asked six questions regarding transfers of cigarette and tobacco products. The survey provided the retailer an opportunity to provide input on the effects of imposing a dollar limit on transfers of cigarette and tobacco products between locations owned by the same person. Of the 1,811 licensed cigarette and tobacco products retailers that operate from multiple locations, 555 completed the survey. Enclosed are the survey results.

The survey revealed that over 38 percent of retailers owning more than one location transfer cigarettes and tobacco products between their locations. Among the retailers who transfer product between locations, 50 percent stated that any dollar limit would adversely affect their business operations. Another 8 percent of respondents wrote in a dollar amount ranging from \$1,200 to \$5,000 as the limit they would be able to operate under. These amounts exceeded the \$1,000 considered the top dollar limit in the survey. Based on these results, it is apparent that transfers of cigarettes and tobacco products are performed by a large percentage of cigarette and tobacco products retailers owning more than one location and the majority of those retailers state any limit would adversely affect their business operations.

Proposed Regulation 4801 is scheduled for discussion at the November 19, 2013 Business Taxes Committee meeting. At this meeting staff will present the Board with three alternatives: 1) adopt the regulation as drafted and presented at the January 2013 meeting which allowed transfers without a limit, 2) prohibit all transfers, or 3) limit transfers and seek legislation imposing a violation and penalty for exceeding a dollar limit on transfers<sup>1</sup>. Because of the adverse impact limiting the dollar amount of transfers will have on retailers, staff is proposing to our Board to continue to allow transfers without a limit to coincide with the Board's current policy on the issue.

As mentioned above, proposed Regulation 4801 will be discussed at the November 19, 2013, Business Taxes Committee meeting in Sacramento. Prior to this meeting staff will present to the Board and interested parties a formal Issue Paper fully discussing the results of the survey, the proposed alternatives, and staff's recommendation. If you would like to provide written comments that may be addressed in the Issue Paper please send them to the above address or email to [Barry.Ivy@boe.ca.gov](mailto:Barry.Ivy@boe.ca.gov) by September 19, 2013. Please be aware that copies of your submission may be provided to other interested parties.

<sup>1</sup> Although the Board may promulgate rules and regulations in order to administer the provisions of the Cigarettes and Tobacco Products Licensing Act (Act), including imposing a limit on transfers, there is no violation within the Act for exceeding an imposed limit. Therefore, if the Board desires to impose a limit, staff recommends seeking legislation establishing a violation in order to enforce such a requirement.

E-file now, find out how . . . [www.boe.ca.gov](http://www.boe.ca.gov)



Therefore, please ensure your comments do not contain confidential information. Your participation at the November 19, 2013 Business Taxes Committee meeting is also welcome. As an interested party you will receive an email containing the formal Issue Paper approximately two weeks prior to the November meeting.

Thank you for your consideration and any participation you may have had in the survey. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Mr. Phillip Bishop, at (916) 327-6440.

Sincerely,



Lynn Bartolo  
Chief, Special Taxes Policy and Compliance  
Division  
Property and Special Taxes Department

LB: pb

Enclosures (Proposed Regulation 4801 and Survey Results)

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District  
Honorable Michelle Steel, Vice Chair, Third District  
Honorable Betty T. Yee, Member, First District (MIC 71)  
Senator George Runner (Ret.), Member, Second District (MIC 78)  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel  
(via e-mail)  
Mr. David Hunter, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Third District  
Mr. Tim Treichelt, Board Member's Office Third District  
Mr. Alan LoFaso, Board Member's Office, First District  
Ms. Mengjun He, Board Member's Office, First District  
Ms. Yvette Stowers, Board Member's Office, First District  
Mr. Sean Wallentine, Board Member's Office, Second District  
Mr. James Kuhl, Board Member's Office, Second District  
Mr. Lee Williams, Board Member's Office, Second District  
Mr. Alan Giorgi, Board Member's Office, Second District  
Ms. Natasha Ralston Ratcliff, State Controller's Office  
Ms. Cynthia Bridges  
Mr. David Gau  
Mr. Randy Ferris  
Mr. Jeffrey L. McGuire  
Mr. Jeff Vest  
Mr. Jeff Angeja  
Mr. David Levine  
Mr. Robert Tucker  
Mr. Stephen Smith  
Mr. Todd Gilman  
Ms. Laureen Simpson  
Ms. Michele Pielsticker  
Mr. Randy Silva  
Ms. Susanne Buehler  
Mr. Phillip Bishop

Regulation 4801. Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person.

*Reference:* Section 22971, 22974, 22974.3, and 22978.4, Business and Professions Code

(a) GENERAL. Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the Board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. These transfer logs or documents will be utilized by Board staff for inventory reconciliation and must be provided upon request at the time of the inspection. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The taxpayer must provide facilities and equipment for reading, locating, and reproducing any invoices maintained on alternative storage media.

(b) SPECIFIC APPLICATION. The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarettes and tobacco products purchase was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,
- (3) A legible itemized listing of cigarettes and tobacco products transferred using the description as found on the original invoice, including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

(c) The transfer of cigarettes and tobacco products shall only be allowed when the legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations. As another example, a transfer between a location licensed to a parent corporation and a location licensed to its wholly owned subsidiary corporation would not qualify under this section since the parent corporation and its wholly owned subsidiary corporation are separate legal entities.

(d) Records of the transfer shall be made available to the Board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents not provided upon request at the time of inspection, or created or provided during or after an inspection has commenced, or created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.



TRANSFERS OF CIGARETTES AND TOBACCO PRODUCTS  
RESULTS OF SURVEY

**Question 1: Do you transfer cigarettes or tobacco products between you retail stores?**

38% - Yes

62% - No

The retailers that answered no to this first question did not answer the remaining five questions, as the survey instructed. The following 2 through 6 questions were only answered by the retailers that transfer cigarettes or tobacco products between their store locations.

**Question 2: How often do you transfer products between your stores?**

28% - Frequently transfer products (at least once a week)

24% - Often transfer products (at least once a month)

27% - Occasionally transfer products (at least once every three months)

21% - Rarely transfer products (at least once a year)

**Question 3: What is the average cost of the cigarettes and/or tobacco products transferred during a calendar quarter (three month period)?**

32% - Less than \$200

23% - \$201 to \$500

13% - \$500 to \$1,000

32% - Over \$1,000

**Question 4: What dollar limit on cost of cigarettes and/or tobacco products transferred during a three month period would not adversely affect your business?**

13% - \$200

15% - \$500

14% - \$1,000

50% - Any dollar limit would adversely affect my business operations

8% - Wrote in a dollar amount which ranged between \$1,200 and \$5,000, with an average of \$2,600

**Questions 5: Would your supplier (Distributor or Wholesaler) still offer a quantity discount if your order was shipped to multiple sites versus a single location?**

22% - Yes

37% - No

41% - Did not know

**Question 6: Do you also have a Cigarette and Tobacco Products Distributor License?**

18% - Yes

82% - No